

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

8114

FILE: B-192215

DATE: October 25, 1978

MATTER OF: Intrastate Cleaning Associates

DIGEST:

Contractor who submits claim to GAO for determination of amount by which contract price should be increased as result of new wage determination must follow procedures set forth in disputes clause of contract, since GAO will only consider dispute arising under contract when it involves solely question of law.

Intrastate Cleaning Associates (Intrastate) appeals to this Office the decision by a Department of the Army (DA) contracting officer to modify contract No. DABT15-78-C-0056 by only increasing the contract price by \$3,143.56 per month rather than by \$4,181 as Intrastate has requested.

The contract requires Intrastate to provide custodial services for Fort Benjamin Harrison, Indiana. In accordance with the Service Contract Act of 1965, 41 U.S.C. § 351 (1970), as amended, the invitation for bids (IFB) included a Wage Determination issued by the Department of Labor (DOL) which set out the minimum wages and fringe benefits that are to be furnished the various classes of service employees engaged in the performance of the contract. The record indicates that the IFB was issued with Wage Determination No. 67-101 (Rev. 13), dated February 28, 1977, but subsequently DOL issued Wage Determination No. 67-101 (Rev. 14), which increased the mandatory minimum wage by \$0.34 per hour. Intrastate and DA attempted to negotiate a bilateral modification of the contract which would incorporate this latest revision into the contract.

However, DA and Intrastate have not been able to agree to a new contract price. As noted above, Intrastate wants an increase of \$4,181 per month while

DA has only offered an increase of \$3,143.56 per month. Having reached an impasse, Intrastate now requests our Office to rule in its favor, granting retroactive payment from April 1, 1978, the date it began paying wages at the rate set out in Rev. 14.

Generally, the authority of this Office does not include intervention between a contractor and a contracting agency for the purpose of resolving a dispute arising under a contract. This is a matter for settlement pursuant to the procedures set out in the "Disputes" clause contained in the contract. Harry C. Partridge, Jr. & Sons, Inc., B-191808, May 11, 1978, 78-1 CPD 366.

Nevertheless, we have held that under certain circumstances a dispute arising under a contract may be considered by our Office. See, Consolidated Diesel Electric Company, 56 Comp. Gen. 340 (1977), 77-1 CPD 93. Among the factors to be considered are whether the contracting officer has rendered a final decision under the Disputes clause, whether the contractor has elected to submit its claim to our Office for a decision, and whether the claim involves only a question of law-- that is, there are no material facts in dispute. Soil Conservation Service and Small Business Administration Contract No. AG18 scs-00100, B-185427, September 21, 1977, 77-2 CPD 308.

From the initial request submitted by Intrastate, it appeared that its claim involved only a question of law. However, upon receipt of the agency's report, it became apparent that to settle this claim a determination must be made of what effect the increase in hourly wages has had on Intrastate's costs and whether all of Intrastate's increased costs should be reflected in the modified contract price. Such a determination is essentially a factual one which, as indicated above, should be resolved under the Disputes clause of the contract.

H-192215

3

We conclude, therefore, that the dispute concerning modification of the contract price must be resolved under the disputes procedures provided by the contract.

Milton J. Facola
for Paul G. Dembling
General Counsel